

Attachment 4

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
Charleston**

Case No. 08-0298-T-PC

INTRADO COMMUNICATIONS INC. and
VERIZON WEST VIRGINIA INC.,
Petition for Arbitration filed pursuant to
§ 252(b) of 47 U.S.C. and 150 C.S.R. 6.1.5.5

**INTRADO COMMUNICATIONS INC.
EXCEPTIONS TO ARBITRATION AWARD AND BRIEF IN SUPPORT**

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Intrado Communications Inc. ("Intrado Comm"), by its attorneys, hereby submits its Exceptions to the November 14, 2008 *Arbitration Award*¹ issued by the Arbitrator in connection with Intrado Comm's Petition for Arbitration ("Petition") to establish an interconnection agreement with Verizon West Virginia Inc. ("Verizon") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").² Intrado Comm also provides a brief in support of its exceptions as permitted by Rule 19.1.³

In the *DBMS Order*, the Public Service Commission of West Virginia ("Commission") recognized the benefits of competitive 911/E-911 services to public safety answering points ("PSAPs") and other public safety agencies.⁴ The Commission supported entry by competitive providers of 911/E-911 services because doing so would provide competitive alternatives in a market for which such choices did not currently exist. The final decision to be issued by the

¹ Case No. 08-0298-T-PC, *INTRADO COMMUNICATIONS INC. and VERIZON WEST VIRGINIA INC., Petition for Arbitration filed pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.1.5.5, Arbitration Award* (Nov. 14, 2008) ("*Arbitration Award*").

² 47 U.S.C. § 252(b).

³ C.S.R. § 150-1-19.1.

⁴ See generally Case No. 04-0102-T-GI, *Frontier Communications of West Virginia Inc., Armstrong Telephone Company, Hardy Telecommunications Inc., Spruce Knob Seneca Rock Telephone Inc., War Telecommunications Company and West Side Telecommunications: General Investigation into the provision of Data Base Management*, Order (Nov. 20, 2007).

Commission in this proceeding will be the next step to establishing the roadmap for achieving the Commission's goals.

Many of the *Arbitration Award's* findings, however, are arbitrary and capricious⁵ and will significantly affect Intrado Comm's (or any competitor's) ability to compete in West Virginia for 911/E-911 services to PSAPs and to provide a reliable, redundant, and diverse 911 network to West Virginia consumers. Accordingly, the Commission should adopt the exceptions set forth herein and incorporate Intrado Comm's positions and proposed interconnection agreement language into its final decision in this proceeding.

EXCEPTIONS

Intrado Comm sets forth the following exceptions to the November 14, 2008 *Arbitration Award*:

Issue No. 3

Intrado Comm sets forth the following exceptions with respect to Issue 3.⁶ The first three bullets listed below are discussed in more detail in Intrado Comm's Brief in Support under Section I.

- The *Arbitration Award's* determination that the equal in quality requirements of Section 251(c)(2)(C) of the Act do not require Verizon to bring its 911/E-911 traffic to Intrado Comm's network when Intrado Comm is serving the PSAP to which the 911 call is directed is an error of law and not supported by the record in this proceeding (at 13).
- The finding that the Commission cannot look beyond traditional interconnection arrangements for 911 interconnection is inaccurate and inconsistent with Congressional policy and Federal Communications Commission ("FCC") statements (at 13).
- The statement that the Commission cannot use its authority under Section 253(b) of the Act to adopt Intrado Comm's proposals because that section does not apply to interconnection determinations is an error of law and not supported by the record in this proceeding (at 14).

⁵ W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

⁶ As the *Arbitration Award* notes, the resolution of Issue 3 affects, at a minimum, the resolution of Issues 4, 9, 34, and 54. Accordingly, Intrado Comm's exceptions apply equally to those issues.

- The *Arbitration Award*'s characterization of the decisions issued by the Public Utilities Commission of Ohio with respect to the arbitration proceedings between Intrado Comm and Embarq and Intrado Comm and CBT is not accurate and misstates the findings of the Ohio commission in both proceedings (at 14).
 - With respect to Embarq, the parties did not agree that Embarq would interconnect at one point on Intrado Comm's network – this was an issue for arbitration before the Ohio commission. In light of the FCC's findings and the industry-standard practice that the POI is located at the selective router serving the PSAP to which the 911 call is destined, the Ohio commission determined that Embarq should be required to interconnect at an Intrado Comm selective router located within Embarq's service territory.⁷
 - The Ohio commission's findings in the *Ohio CBT Arbitration Award* were consistent with the Ohio commission's previous decision. Again, the issue of whether CBT was required to interconnect on Intrado Comm's network was an issue presented for arbitration to the Ohio commission. And again, in light of FCC precedent and industry-standard practice, the Ohio commission determined that CBT was required to interconnect to Intrado Comm's network when Intrado Comm was serving the PSAP to which the 911 call was directed.⁸ The Ohio commission did not "refine[]" its prior holdings in the *Ohio CBT Arbitration Award* as the *Arbitration Award* suggests.⁹ Unlike Embarq, CBT is not a multi-LATA carrier because it serves customers in only one LATA. Thus, the determination that interconnection must occur on Intrado Comm's network "within CBT's LATA" was entirely consistent with the prior determination that interconnection must occur on Intrado Comm's network "within Embarq's service territory."
- Intrado Comm requests that the Commission strike the section of the *Arbitration Award* starting on page 14 "In one respect. . ." and ending on page 15 with "See, Telephone Rule 15.3.a" (at 14-15). This dicta regarding the procedural posture of the Ohio arbitration proceeding between Intrado Comm and another carrier is inaccurate, and more importantly, irrelevant to the Commission's resolution of Issue 3. The issue of whether Intrado Comm's interconnection agreements with Embarq in Ohio should be governed by Section 251(a) or by Section 251(c) was a specific issue presented for arbitration to the Ohio commission. The Ohio commission did not "recast" Intrado Comm's petition or

⁷ Verizon Cross Exhibit 1 (Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award at 33 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*").

⁸ Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Arbitration Award at 9-10, 14-15 (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*").

⁹ *Arbitration Award* at 14.

“unilaterally pick out” which issues would be 251(a) issues.¹⁰ Rather, the application of 251(a) was squarely before the Ohio commission in the arbitration proceeding. Regardless, there is no reason for this discussion to be included in the *Arbitration Award* as it has no bearing on the resolution of Issue 3 or any other issue before the Commission in this proceeding.

Issue No. 6

Intrado Comm requests that the Commission reverse the *Arbitration Award*’s determination that reciprocal forecasting language is not needed in the Parties’ interconnection agreement because this determination is not supported by record evidence (at 19). This issue is discussed in more detail in Intrado Comm’s Brief in Support under Section II.

Issue No. 12

The *Arbitration Award*’s statement that resolution of Issue 3 renders Intrado Comm’s dedicated trunking proposal moot is incorrect (at 20). Intrado Comm’s proposal that Verizon use dedicated trunking from its end offices to transport Verizon-originated 911/E-911 traffic to Intrado Comm is not solely about identifying the point of interconnection. The requested trunking arrangement is necessary for reliability and redundancy purposes, and to ensure 911/E-911 traffic destined for Intrado Comm’s PSAP customers is not unnecessarily switched at the Verizon selective router before being handed-off to Intrado Comm. The *Arbitration Award* fails to address the record evidence that Verizon uses the same types of arrangements requested by Intrado Comm within its own network, and that Verizon’s failure to provide those arrangements to Intrado Comm is a violation of the equal in quality requirements. This issue is discussed in more detail in Intrado Comm’s Brief in Support under Section I.

Issue No. 14

The determination that Verizon’s proposed language is sufficient to establish mutually acceptable automatic location information (“ALI”) steering arrangements is not supported by the record (at 21). Intrado Comm’s proposed language is not compelling Verizon to perform functions that are Intrado Comm’s obligation as the *Arbitration Award* finds. Intrado Comm’s proposed language establishes the operational requirements necessary to enable call transfers with ALI between separate 911/E-911 networks. This issue is discussed in more detail in Intrado Comm’s Brief in Support under Section III.

Issue Nos. 34 and 35

Intrado Comm seeks clarification with respect to the *Arbitration Award*’s finding that state tariffs can be used as a pricing mechanism in interconnection agreements (at 24). Specifically, Intrado Comm seeks clarification that the reference to “state tariffs” would not include Verizon retail tariffs that were developed outside of the Section 251/252 process. As the *Arbitration Award*

¹⁰ *Arbitration Award* at 15.

notes, the FCC has not prohibited the use of state tariffs as a pricing mechanism,¹¹ but the FCC also has not endorsed the use of rates that do not otherwise comply with the requirements of Sections 251 and 252.¹² Tariffed rates are not necessary to achieve nondiscriminatory rates in the Section 251-252 context and cannot be used to circumvent state commission decisions under Section 252.¹³ Accordingly, the statements in the *Arbitration Award* should be clarified to ensure that Verizon does not impose tariffed rates on Intrado Comm that were developed outside of Sections 251/252 for services that should otherwise be subject to the pricing parameters of Section 252(d).¹⁴

Preliminary Jurisdictional Issue

Intrado Comm requests that the Commission strike the entire section of the *Arbitration Award* titled “Preliminary Jurisdiction Issue” (at 10-11).

- First and foremost, Intrado Comm’s right to a Section 251(c) interconnection agreement was not an issue presented for arbitration by the Parties,¹⁵ and thus there was no need for the inclusion of this section in the *Arbitration Award*. The discussion of this issue only serves as a distraction to the issues to be addressed by the Commission and should therefore be stricken from the final Commission order.
- Further, the *Arbitration Award* appears to classify Intrado Comm’s competitive 911/E-911 service to PSAPs as an “interexchange” service, which is incorrect from a legal and factual perspective. The classification of 911/E-911 service is not at issue here, and the *Arbitration Award* offers no basis for its finding that Intrado Comm’s competitive 911/E-911 service is an interexchange service. Interexchange services are generally synonymous with “telephone toll services,” which are services between stations in different exchange areas for which there is a separate charge.¹⁶
 - 911/E-911 services to PSAPs do not fall within this definition. 911/E-911 services to PSAPs are routinely included in intrastate local exchange service tariffs,¹⁷ and 911/E-911 services are not based on the concept of an “exchange.” Rather, 911 calls are routed based on the calling number, which is linked to a

¹¹ *Arbitration Award* at 24.

¹² *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, 17 FCC Rcd 27039, ¶ 601 (2002) (“*Virginia Arbitration Order*”).

¹³ *Virginia Arbitration Order* ¶ 602.

¹⁴ Intrado Comm Hearing Exhibit 2, Spence-Lenss Direct Testimony at 17, lines 18-21; Intrado Comm Brief at 34-35.

¹⁵ Intrado Comm Hearing Exhibit 2, Rebuttal Testimony at 5, lines 8-18.

¹⁶ 47 U.S.C. § 153(48).

¹⁷ See, e.g., Intrado Comm Hearing Exhibit 2, Direct Testimony at Spence-Lenss Exhibit No. 6 (providing relevant portions of Verizon’s West Virginia 911/E-911 tariff).

particular geographic area or political jurisdiction, not a defined exchange area.¹⁸ Neither 911 callers nor PSAPs are subject to a separate charge for making or receiving a 911 call. The concept of “interexchange” is simply inapplicable to 911/E-911 services, and thus the *Arbitration Award*’s characterization of Intrado Comm’s services in this manner should be stricken from the final Commission order.

Other Miscellaneous Findings

The *Arbitration Award* states that Intrado Comm will not be serving end users under its interconnection agreement with Verizon (at 9). This is incorrect. Intrado Comm’s West Virginia PSAPs and public safety agency customers are appropriately characterized as “end users.” Today, West Virginia PSAPs or public safety agencies are purchasing services from Verizon at retail rates via a retail tariff and are accorded end user status by Verizon.¹⁹ These users should be treated no differently when being served by Intrado Comm.

BRIEF IN SUPPORT

I. ISSUES 3 AND 12: THE POINT OF INTERCONNECTION SHOULD BE ON INTRADO COMM’S NETWORK WHEN INTRADO COMM IS THE 911/E-911 SERVICE PROVIDER AND THE USE OF DEDICATED TRUNKING TO DELIVER 911/E-911 CALLS SHOULD BE REQUIRED CONSISTENT WITH INDUSTRY PRACTICE

The *Arbitration Award*’s findings with respect to Issues 3 and 12 fail to take into account record evidence and established law, and should therefore be reversed.

A. The *Arbitration Award* Impermissibly Ignores the Network Architecture Developed by Verizon for the Treatment of 911/E-911 Traffic within Verizon’s Network and for Verizon’s PSAP Customers

While the language of Section 251 itself may make no distinction between interconnection for plain old telephone service (“POTS”) and interconnection for 911/E-911 services,²⁰ as the record reflects,²¹ FCC precedent and Verizon’s own network 911 architecture

¹⁸ *911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, n.32 (2005) (“*VoIP E911 Order*”).

¹⁹ Intrado Comm Hearing Exhibit 2, Spence-Lenss Direct Testimony at 9, lines 1-5.

²⁰ *Arbitration Award* at 13.

²¹ *See, e.g.*, Intrado Comm Hearing Exhibit 1, Hicks Direct at 9-13; Intrado Comm Hearing Exhibit 1, Rebuttal at 9-11; Intrado Comm Brief at 8-12; Intrado Comm Reply Brief at 4-7.

arrangements clearly demonstrate a well-established difference between interconnection for the exchange of POTS traffic and interconnection for 911/E-911 services. The *Arbitration Award* fails to even consider those aspects of the record. Further, requiring Intrado Comm to establish 911 interconnection arrangements different from those endorsed by the FCC and used by every other 911/E-911 service provider today would violate the equal in quality requirements of the Act. The *Arbitration Award*'s erroneous conclusion that the equal in quality requirements of Section 251(c)(2)(C) are not applicable to the interconnection arrangements Verizon provides itself²² should therefore be reversed.

FCC Precedent. The *Arbitration Award* makes no mention of the FCC's determination that the point of interconnection and the "cost allocation point" for 911/E-911 traffic is at the selective router serving the PSAP to which the call is destined.²³ This decision was based on "the nature and configuration of the existing network components used to provide wireline E911 service"²⁴ and input from PSAPs that asserted the selective router was the appropriate demarcation point for allocating responsibility and associated costs between carriers.²⁵ Although the finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.²⁶ Thus, the FCC determined that, when a 911 call is made, the carrier must bring the 911 call, as well as the information about the

²² *Arbitration Award* at 13.

²³ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*"); see also Intrado Comm Brief at 9, n.41.

²⁴ *King County Order* ¶ 4.

²⁵ *King County Order* at n.4.

²⁶ *King County Order* ¶ 11.

caller (*i.e.*, the caller's phone number and location) to the 911/E-911 network for processing, and specifically, the equipment that analyzes and distributes the call - the 911 selective router.²⁷

Verizon never disputed this well-established precedent in its testimony or briefs. The *Arbitration Award* ignores this precedent and Verizon's failure to refute its application to the instant proceeding. Indeed, Verizon actually agreed that the selective router serving the PSAP is the appropriate location for the POI.²⁸ The *Arbitration Award*'s complete failure to consider the FCC's statements with respect to the location of the POI in the 911/E-911 context is therefore a reversible error of law.²⁹

Verizon's 911 Network Arrangements. The *Arbitration Award* also does not adequately consider the record evidence of the 911 network arrangements Verizon has established for itself for interconnection and routing of 911/E-911 traffic to Verizon's PSAP customers.³⁰ The *Arbitration Award*'s statement that resolution of Issue 3 moots Intrado Comm's dedicated trunking proposal (Issue 12) is also incorrect.³¹ Intrado Comm's proposal that Verizon use dedicated trunking from its end offices to transport Verizon-originated 911/E-911 traffic to Intrado Comm is not solely about the location of the point of interconnection, but instead is also

²⁷ Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington, WT Docket No. 94-102 (rel. May 7, 2001).

²⁸ Verizon Hearing Exhibit No. 1, Direct Testimony at 35, lines 717-18.

²⁹ See, e.g. *Harrison v. Ginsberg*, 169 W.Va. 162, 168 (1982) (reversing and remanding circuit court's affirmation of Department of Welfare's denial to benefits to appellant, as circuit court had limited its inquiry to "arbitrary and capricious" standard, and "[t]he decision of the [Department of Welfare] hearing officer . . . is devoid of discussion of the evidence presented by the appellant regarding his age, education and work experience" as well as "the evidence of pain presented by the appellant...[that] is relevant in determining the effect of an incapacity on a person's ability to perform gainful work"); see also W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

³⁰ See, e.g., Intrado Comm Hearing Exhibit 1, Hicks Direct at 9-13; Intrado Comm Hearing Exhibit 1, Rebuttal at 9-11; Intrado Comm Brief at 8-12; Intrado Comm Reply Brief at 4-7.

³¹ *Arbitration Award* at 20.

based on the 911 interconnection arrangements Verizon uses within its own network for the provision of 911/E-911 services to its own PSAP customers.

The *Arbitration Award* notes in passing that competitive local exchange carriers (“CLECs”) are required to establish points of interconnection at Verizon’s selective routers for delivery of the CLECs’ end user 911 calls to Verizon’s PSAP customers,³² but does not address why Intrado Comm is not entitled to require similar arrangements from Verizon. Even the FCC has recognized that CLECs are responsible for the costs of transmitting their customers’ 911 calls from the CLEC switch to the 911 selective router serving the PSAP to which the 911 call is destined.³³ There is no justification provided for insulating Verizon from this same requirement when it provides 911 calls to another 911 service provider such as Intrado Comm. Further, while the *Arbitration Award* acknowledges that Verizon does not require adjacent incumbent local exchange carriers (“ILECs”) to interconnect to Verizon’s selective router when Verizon is not the 911/E-911 service provider for the PSAP,³⁴ the *Arbitration Award* does not address why it is appropriate for Verizon to deny Intrado Comm similar treatment. Nor does the *Arbitration Award* even discuss, much less analyze, the undisputed record evidence that Verizon deploys dedicated trunking in its network for the delivery of 911 calls to its PSAP customers and requires CLECs to use dedicated trunking when interconnecting with Verizon’s selective routers for the delivery of CLEC-originated 911 calls to Verizon’s PSAP customers.

Neither Verizon nor the *Arbitration Award* provide any factual or legal justification for denying Intrado Comm the 911 interconnection arrangements Verizon demands for itself and requires of others seeking to terminate 911 traffic to Verizon’s PSAP customers. The

³² *Arbitration Award* at 6.

³³ *King County Order* ¶ 15.

³⁴ *Arbitration Award* at 7.

Arbitration Award's recitation of how POI and trunking arrangements are established for POTS traffic have no bearing on POI arrangements for 911/E-911 traffic as evidenced by Verizon's own network arrangements.³⁵ As explained further below, this parity of treatment is exactly the issue Congress sought to address in its adoption of the equal in quality requirements of Section 251(c)(2)(C). Indeed, Section 251(c) was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [ILECs]."³⁶ The *Arbitration Award*'s failure to address this undisputed record evidence is reversible error.³⁷

In addition, the *Arbitration Award*'s finding that there is no evidence that the provision of 911/E-911 service in West Virginia is deficient, flawed, or substandard³⁸ further supports Intrado Comm's proposed interconnection arrangements. Contrary to the *Arbitration Award*'s suggestion, Intrado Comm never claimed that the provision of 911/E-911 service in West Virginia is flawed or substandard. In fact, Intrado Comm agrees with Verizon that the current 911 network architecture used in West Virginia provides the most reliable and redundant

³⁵ Transcript at 206-207 (D'Amico).

³⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) ("Local Competition Order") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

³⁷ *Reynolds Transp. Co. v. Public Service Commission*, 26 S.E.2d 519, 523-524 (W.Va. 1943) (citing *Anchor Coal Company v. Public Service Commission*, 5 S.E.2d 406, 411 (W.Va. 1941) (reversing Public Service Commission's grant of a certificate of convenience and necessity, explaining, "We do not interfere, on review, with the action of the commission, unless it has exceeded the power which it could constitutionally exercise, has gone beyond its statutory powers, or its action is based upon a mistake of law. However, this does not exclude the right to correct a decision of the commission where it has failed to give consideration to evidence proper to be considered, and failure to consider such evidence may be classified as a mistake of law.")); *see also* W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

³⁸ *Arbitration Award* at 13.

provision of 911/E-911 services for West Virginia PSAPs and 911 callers.³⁹ This is precisely why Intrado Comm seeks to have the same types of arrangements implemented between the Parties' networks when Intrado Comm is the designated 911/E-911 service provider as required by Section 251(c)(2)(C) of the Act.

Verizon's 911 arrangement for itself, with CLECs, and with adjacent non-competing 911/E-911 service providers demonstrate that such an arrangement – establishing the POI for the exchange of 911 traffic at the selective router serving the designated PSAP and using dedicated trunks from the end office to deliver the 911 call to the selective router serving the PSAP – is the *preferred* method of interconnection for completing calls to the appropriate 911/E-911 service provider.⁴⁰ Verizon's template interconnection agreement for CLECs that need to terminate their customer 911/E-911 calls to PSAPs served by Verizon demonstrates that Verizon does not follow the POI rules established for POTS that Verizon seeks to impose on Intrado Comm here.⁴¹ As Verizon admits, establishing dedicated trunking to a point of interconnection at the selective router of the entity serving the PSAP to which the 911 call is directed is consistent with service quality requirements and industry standards.⁴² This network architecture arrangement was developed by Verizon based on Verizon's determination that it provides the most reliable and efficient 911 network.⁴³ Intrado Comm seeks nothing different when it is the designated 911/E-

³⁹ Transcript at 205, lines 1-10 (Buckley).

⁴⁰ See, e.g., Transcript at 172, lines 1-4 (Buckley) ("And as I said before, no CLEC has ever complained that this is a problem for them or not the most efficient way to do it as Mr. Hicks noted earlier."); Transcript at 208, line 17 to 209, line 9 (D'Amico).

⁴¹ See generally Intrado Comm Cross Exhibit 1.

⁴² Transcript at 208, lines 18-25 (D'Amico).

⁴³ Transcript at 205, lines 1-10 (Buckley).

911 service provider.⁴⁴ The *Arbitration Award*'s failure to consider the applicability of the undisputed use of these arrangements is contrary to law and should be reversed.

Equal in Quality Requirements. The *Arbitration Award*'s determinations regarding the applicability of the equal in quality requirements⁴⁵ are not supported by law or record evidence, and should therefore be reversed.⁴⁶ The lone rule cited by the *Arbitration Award*, without any further legal support or discussion of the record, does not justify the rejection of Intrado Comm's interconnection proposals.

The plain language of the FCC rule cited by the *Arbitration Award* indicates that equality in design of interconnection facilities is the minimum standard to meet the equal in quality requirement.⁴⁷ There is no support in the rule or FCC case law – nor does the *Arbitration Award* cite any – for the *Arbitration Award*'s finding that equality of “technical standards” is enough to satisfy the equal in quality standards.⁴⁸ The equal in quality requirements pertain to the design of interconnection facilities and arrangements as compared to those same facilities and arrangements in the ILEC's network.⁴⁹ **Where** the POI is located and **how** traffic gets to that POI clearly implicates design of interconnection facilities and arrangements.

⁴⁴ Intrado Comm Brief at 9-10.

⁴⁵ *Arbitration Award* at 13.

⁴⁶ *Reynolds Transp. Co. v. Public Service Commission*, 26 S.E.2d 519, 523-524 (W.Va. 1943) (citing *Anchor Coal Company v. Public Service Commission*, 5 S.E.2d 406, 411 (W.Va. 1941) (reversing Public Service Commission's grant of a certificate of convenience and necessity, explaining, “We do not interfere, on review, with the action of the commission, unless it has exceeded the power which it could constitutionally exercise, has gone beyond its statutory powers, or its action is based upon a mistake of law. However, this does not exclude the right to correct a decision of the commission where it has failed to give consideration to evidence proper to be considered, and failure to consider such evidence may be classified as a mistake of law.”); see also W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

⁴⁷ 47 C.F.R. § 51.305(a)(3).

⁴⁸ *Arbitration Award* at 13.

⁴⁹ *Local Competition Order* ¶ 224; see also Intrado Comm Reply Brief at 5.

But that is not all the equal in quality requirement is intended to address. In adopting implementing rules for the 1996 amendments to the Act, the FCC noted that the imposition of disparate conditions between carriers on the pricing and ordering of services would violate the equal in quality requirement.⁵⁰ Such a condition has nothing to do with the design of interconnection facilities or “technical standards.” Indeed, the FCC has recognized that the equal in quality requirement of the Act entitles competitors to receive interconnection for 911/E-911 services in the same manner that incumbents provide such service to themselves (*i.e.*, parity).⁵¹ Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs like Verizon to provide competitors like Intrado Comm interconnection that is at least equal in quality to the interconnection Verizon provides itself for routing 911 and E-911 calls to PSAPs.⁵² Interconnection must be provided to a competitor “in a manner no less efficient than the way in which the [ILEC] provides the comparable function to its own retail operations.”⁵³ Section 251(c)(2) of the Act was intended to prevent an ILEC from discriminating between itself and a requesting competitor with respect to the quality of the interconnection provided.⁵⁴ Accordingly, the *Arbitration Award*’s findings to the contrary should be summarily rejected as inconsistent with established law.

⁵⁰ *Local Competition Order* ¶ 224.

⁵¹ *Local Competition Order* ¶ 16.

⁵² *Virginia Arbitration Order* ¶ 652.

⁵³ *Local Competition Order* ¶ 218.

⁵⁴ *Iowa Util. Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000).

B. The *Arbitration Award* Fails to Recognize the Commission's Broad Authority under Section 253 and Other Provisions of the Act

The *Arbitration Award* dismisses, without citation to any record evidence or legal authority,⁵⁵ Intrado Comm's argument that Section 253 of the Act and other policy considerations permit the Commission to look beyond the traditional interconnection arrangements used for POTS traffic to establish a physical architecture arrangement that addresses the special needs of PSAPs and 911 callers.⁵⁶ There is no doubt that the Commission has a critical role in the oversight of the rollout of 911 services. As the FCC has found, Sections 251(e) and 706 of the Act give the FCC, as well as state commissions, authority to oversee the deployment of 911 services.⁵⁷ The FCC found that the "uniform availability of E911 services may spur consumer demand" for broadband services, which accomplishes the goals of the Act.⁵⁸ 911/E911 services play a "critical role" in achieving the Act's goal of promoting safety of life and property because "improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce."⁵⁹ A determination that Intrado Comm's interconnection proposals should be adopted is consistent with these principles.

In fact, the FCC has specifically recognized that prior changes in the 911 industry have required carriers to adapt their networks, prepare and modify their switches, and generally change their networks to accommodate changes to the 911 system.⁶⁰ The FCC determined that

⁵⁵ See, e.g., Intrado Comm Hearing Exhibit 2, Spence-Lenss Direct at 11-12; Intrado Comm Hearing Exhibit 2, Rebuttal at 12-13; Intrado Comm Brief at 19.

⁵⁶ *Arbitration Award* at 13.

⁵⁷ *VoIP E911 Order* ¶¶ 31, 33.

⁵⁸ *VoIP E911 Order* ¶ 31.

⁵⁹ *VoIP E911 Order* ¶ 32 (citing 47 U.S.C. § 615(a)(3)).

⁶⁰ *VoIP E911 Order* ¶ 34.

the authority to require such network changes to the nation's 911 infrastructure was inherent in Congress's adoption of the Wireless Communications and Public Safety Act of 1999, which directed the FCC to support efforts by states to deploy comprehensive end-to-end emergency communications infrastructure and programs.⁶¹

Moreover, there is ample record evidence that Section 253 of the Act provides the Commission with additional authority to adopt Intrado Comm's proposals.⁶² The *Arbitration Award's* finding that "Section 253(b) does not speak in any way to interconnection requirements" ignores the law and is not based on record evidence.⁶³ Congress has made clear that the states play a role in the development of competitive telecommunications markets.⁶⁴ Section 253(b) "set[s] aside a large regulatory territory for State authority" and gives the Commission ample support for adoption of Intrado Comm's proposals, which serve to protect the public safety and welfare and the rights of consumers.⁶⁵ Other state commissions have similarly relied on Section 253(b) as a grant of authority to make arbitration decisions to protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers based on the fact that 911 calls are a matter of the utmost public

⁶¹ *VoIP E911 Order* ¶ 34.

⁶² See, e.g., Intrado Comm Hearing Exhibit 2, Spence-Lenss Direct at 11-12; Intrado Comm Hearing Exhibit 2, Rebuttal at 12-13; Intrado Comm Brief at 19.

⁶³ *Arbitration Award* at 14.

⁶⁴ *The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, ¶¶ 51-52 (1997).

⁶⁵ *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999).

interest.⁶⁶ The *Arbitration Award* ignores this FCC and state commission precedent, and therefore should be reversed as to this issue.

II. ISSUE 6: RECIPROCAL FORECASTING IS NECESSARY TO SUPPORT THE PARTIES' INTERCONNECTED NETWORKS

In its blanket finding that Verizon's arguments with respect to Issue 6 are reasonable,⁶⁷ the *Arbitration Award* ignores the majority of evidence in the record as to why reciprocal forecasting obligations are appropriate, and more important, critically necessary for the Parties' interconnected networks to support 911/E-911 traffic in West Virginia. The *Arbitration Award's* unwarranted focus on misdirected calls is also inconsistent with the record.⁶⁸ Intrado Comm is not requesting reciprocal forecasting provisions to address only misdirected calls that may need to be redirected to Verizon's network, as reflected in the record.⁶⁹

The primary purpose of trunk forecasts, especially in the 911 context, is to alert interconnecting parties to anticipated growth plans so that the interconnecting party may engineer, furnish and install the equipment necessary to accommodate such growth.⁷⁰ Only Verizon, not the PSAP, has knowledge of Verizon's switch consolidation plans and anticipated line growth expectations, both of which can significantly affect 911 trunk quantity needs. Reciprocal forecasting is even more important in the instant situation when, according to Verizon,⁷¹ a significant majority of the traffic exchanged between the Parties' networks will be

⁶⁶ ICC Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (I.C.C. Mar. 21, 2001).

⁶⁷ *Arbitration Award* at 19.

⁶⁸ *Arbitration Award* at 19.

⁶⁹ See, e.g., Intrado Comm Hearing Exhibit 3, Clugy Direct at 4-6.

⁷⁰ See, e.g., Intrado Comm Hearing Exhibit 3, Clugy Rebuttal at 2, lines 2-181; Intrado Comm Brief at 32.

⁷¹ See, e.g., Verizon Brief at 21.

originated by Verizon's end users dialing 911. Verizon, not Intrado Comm or its PSAP customer, will therefore be in the best position to determine the trunking needs between the Parties' networks. The *Arbitration Award's* failure to consider this record evidence is therefore an error of law.⁷²

Further, if one were to accept as correct the *Arbitration Award's* finding that Intrado Comm served PSAPs have the best knowledge of call volumes, then the reverse should be true for Verizon served PSAPs. Under the construct created by the *Arbitration Award*, Verizon PSAP customers, not Intrado Comm, would be in the best position to determine the trunking requirements for Intrado Comm-originated 911 calls destined for Verizon PSAPs, thereby eliminating the need for any forecasts to be exchanged between the Parties. Yet the *Arbitration Award* does not even consider this, and instead, arbitrarily determines that when Intrado Comm is the 911/E-911 service provider, Intrado Comm is not entitled to the same forecasts that Verizon demands when Verizon is the 911/E-911 service provider.

In addition, without any basis or support, the *Arbitration Award* finds that other provisions of the interconnection agreement will satisfy Intrado Comm's request for "traffic and usage data" information.⁷³ This finding does not address (or even mention) Intrado Comm's argument that the forecasting provisions serve a different purpose than the generic provision of the interconnection agreement giving the Parties the opportunity to "meet" and discuss trunking

⁷² See, e.g. *Harrison v. Ginsberg*, 169 W.Va. 162, 168 (1982) (reversing and remanding circuit court's affirmation of Department of Welfare's denial to benefits to appellant, as circuit court had limited its inquiry to "arbitrary and capricious" standard, and "[t]he decision of the [Department of Welfare] hearing officer . . . is devoid of discussion of the evidence presented by the appellant regarding his age, education and work experience" as well as "the evidence of pain presented by the appellant...[that] is relevant in determining the effect of an incapacity on a person's ability to perform gainful work"); see also W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

⁷³ *Arbitration Award* at 19.

usage.⁷⁴ Indeed, the fact that the two provisions were included in the Verizon template interconnection agreement is evidence alone that they serve different purposes with any uncertainties or ambiguity construed against Verizon as the drafter of the agreement.⁷⁵ A specific provision, such as the one found in Section 1.6.2 of the 911 Attachment, should control over a more general provision such as the one found in Section 1.5.5 of the 911 Attachment.⁷⁶ Accordingly, the *Arbitration Award*'s reliance on the use of Section 1.5.5 to satisfy Intrado Comm's need for reciprocal forecasting should be reversed.

III. ISSUE 14: ALI STEERING ARRANGEMENTS ARE NECESSARY TO ENSURE PSAPS RECEIVE CRITICAL LOCATION INFORMATION DURING 911 CALL TRANSFERS

The *Arbitration Award*'s summary rejection of Intrado Comm's proposed language regarding ALI steering should be reversed because it was not adequately explained and does not comport with record evidence.⁷⁷ The *Arbitration Award* fails to grasp the operational requirements necessary to enable call transfers with ALI between separate 911 networks and the intent of Intrado Comm's proposed language. Intrado Comm's proposed language does not require Verizon to perform any functions that are otherwise deemed to be Intrado Comm's obligation.⁷⁸ In fact, the only thing that Intrado Comm's proposed language would require Verizon to do is to work cooperatively with Intrado Comm to ensure that all West Virginia

⁷⁴ See, e.g., Intrado Comm Hearing Exhibit 3, Clugy Direct at 5, lines 10-12; Intrado Comm Hearing Exhibit 3, Clugy Rebuttal at 3, lines 14-18; Intrado Comm Brief at 33.

⁷⁵ See, e.g., *Charlton v. Chevrolet Motor Co.*, 115 W. Va. 25, 27-28 (1934).

⁷⁶ See, e.g., *McCullough v. Branch Banking & Trust Co.*, 35 F.3d 127, n.2 (4th Cir. 1994) ("when faced with a conflict between a general provision and a specific provision, the specific provision controls").

⁷⁷ *Atlantic Greyhound Corp. v. Public Service Commission*, 132 W.Va. 650, 666 (1949) ("an order of the commission entered upon a finding which is contrary to the evidence or is not supported by evidence will be set aside"); see also W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

⁷⁸ *Arbitration Award* at 21.

PSAPs can receive 911 call transfers with the critical location information (*i.e.*, ALI) of the person dialing 911.

Intrado Comm's proposed language also has nothing to do with including Verizon's end user data in the ALI database as the *Arbitration Award* suggests.⁷⁹ Intrado Comm's language would require Intrado Comm and Verizon to work cooperatively and store the pANI numbers associated with adjacent PSAPs in each Party's respective ALI steering tables.⁸⁰ If the PSAP receiving the call transfer is interconnected with a 911/E-911 network that is separate from that of the PSAP performing the call transfer, the pANI number associated with the caller would not be contained in the ALI steering tables of the PSAP receiving the call and the location of the caller could not be automatically retrieved. Thus, adoption of Intrado Comm's proposed language will permit a PSAP who receives a call transfer associated with a wireless or nomadic voice over Internet Protocol ("VoIP") call to also receive the necessary ALI information to ensure the caller's emergency is addressed adequately.

In addition to the factual inaccuracies in the *Arbitration Award*, the decision also ignores the critical affect rejection of Intrado Comm's language will have on West Virginia PSAPs.⁸¹ As many as 30-40 percent of wireless 911 calls **routinely** require transfer to another PSAP, regardless of the 911/E-911 service provider involved. Without the language requested by Intrado Comm, West Virginia PSAPs opting for a competitive 911 provider will lose the ability to receive a call transfer with ALI from a Verizon served PSAP, and Verizon served PSAPs will

⁷⁹ *Arbitration Award* at 21.

⁸⁰ As explained in Intrado Comm's testimony, wireless and IP-enabled service providers provide 911 calling capabilities to their end users through the use of pANI numbers employed for use in determining which PSAP the 911 call is to be terminated to, as well as for the retrieval of the ALI associated with the caller. *See* Intrado Comm Hearing Exhibit 1, Hicks Direct Testimony at 30-31.

⁸¹ *See, e.g.*, Intrado Comm Hearing Exhibit 1, Hicks Direct at 31, lines 10-15 and 32, lines 11-14; Intrado Comm Brief at 36-37; Intrado Comm Reply Brief at 13.

also be unable to receive a call transfer with ALI from a PSAP served by a competitive provider.⁸² The *Arbitration Award*'s failure to address any of this undisputed record evidence⁸³ constitutes reversible error.⁸⁴

⁸² See, e.g., Intrado Comm Hearing Exhibit 1, Hicks Direct at 8-15.

⁸³ Neither Verizon's testimony nor its briefs address the evidence presented by Intrado Comm that ALI steering arrangements are necessary to support the interconnection of the Parties' 911/E-911 networks.

⁸⁴ *Atlantic Greyhound Corp. v. Public Service Commission*, 132 W.Va. 650, 666 (1949) ("an order of the commission entered upon a finding which is contrary to the evidence or is not supported by evidence will be set aside"); see also W. Va. Code § 29A-5-4 (stating appellate courts may overturn agency decisions that are arbitrary and capricious).

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission adopt Intrado Comm's exceptions and requests for clarifications as set forth herein for inclusion in the Commission's final order.

Respectfully submitted,

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Dated: November 21, 2008

Its Attorneys

CERTIFICATE OF SERVICE

I, E. Dandridge McDonald, counsel for Intrado Communications Inc., do hereby certify that a copy of the foregoing Exceptions to Arbitration Award and Brief in Support has been served upon all parties of record to this proceeding this 21st day of November, 2008, addressed as follows:

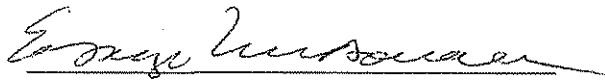
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